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February 16, 2012

VIA ECF FILING

The Honorable Dora L. Irizarry
U.S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

**Re: *Skee Ball, Inc. v. Full Circle United, LLC* ("Action No. 1")
United States District Court, Eastern District of New York
Case No.: 11-CV-6277 (DLI) (LB)**

***Full Circle United, LLC v. Skee Ball, Inc.* ("Action No. 2")
United States District Court, Eastern District of New York
Case No.: 1:11-CV-5476 (DLI) (LB)**

Dear Judge Irizarry:

On February 13, 2012, on behalf of our client, Skee Ball, Inc. ("SBI"), Geri Krauss wrote to you regarding the discrepancy between the manner in which the above-referenced cases have been listed in ECF and the actual legal posture of the cases, and to respectfully request that the Court direct that ECF make the necessary corrections.

Today, February 16, 2012, J. Gregory Lahr filed a responsive letter on behalf of Full Circle United, LLC ("Full Circle"). I am now writing to correct the misstatements in Mr. Lahr's February 16, 2012, letter.

On October 5, 2011, SBI properly commenced the first-filed action, *Skee Ball, Inc. v. Full Circle United, LLC*, in the United States District Court, Northern District of California

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("Action No. 1"). The case was assigned to Magistrate Judge Elizabeth D. Laporte. The SBI Action was never assigned or heard by Magistrate Judge Illston, as stated in Mr. Lahr's letter. In fact, Judge Susan Illston is not a Magistrate.

On November 8, 2011, Full Circle filed Action No. 2.

On November 9, 2011, Full Circle moved before the California Court to dismiss or transfer the SBI Action to this Court. On December 22, 2011, contrary to the statement in Mr. Lahr's letter, Judge Laporte denied Full Circle's motion to dismiss the SBI Action; however, Judge Laporte granted a discretionary transfer to the Eastern District of New York based on forum non conveniens under 28 U.S.C. § 1404. Doc. No. 20 in SBI Action.

Contrary to the statements in Mr. Lahr's letter, the SBI Action was properly filed in the Northern District of California, and it was not dismissed because of improper venue. In fact, Full Circle's motion to dismiss the SBI Action was expressly denied by the California Court. Doc. No. 20 in SBI Action.

Furthermore, despite Mr. Lahr's statement, SBI has not asserted that the cases should not be consolidated. Rather, SBI simply pointed out to the Court that the two cases have only been determined to be "related"; neither party has requested consolidation (although Mr. Lahr appears to be requesting it in his February 16, 2012, letter), nor has consolidation been ordered. On January 25, 2012, Chief Judge Carol Bagley Amon deemed the cases "related," but there was no order that the cases be consolidated.

Action No. 1 was the first-filed case and should be listed as the "lead" case in ECF. That Action No. 1 has a higher index number merely reflects the fact that it was transferred from the Northern District of California after Action No. 2 was commenced here, even though it had been filed in California *more than a month before* Action No. 2 was commenced.

As set forth in my letter of February 13, 2012, the ECF listing is wrong in two respects. First, it lists the two cases, which have only been determined to be "related," as "consolidated." Second, ECF lists Action No. 2 as the "lead case," when, in fact, Action No. 1 was the first-filed case and should be listed as the lead case. Both of these errors relate to one of the issues currently before the Court in SBI's pending motion in Action No. 2, in which it seeks either a stay or outright dismissal of Action No. 2 on the grounds that it is duplicative of Action No. 1, and Action No. 1 was the first-filed action.

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Accordingly, to accurately reflect the status of these cases, as set forth in full in my letter of February 13, 2012, and to render the ECF listing consistent with the facts underlying the relief requested in SBI's pending motion, we respectfully request that the Court instruct ECF to remove any designation that the cases have been consolidated and that Action No. 1 should be listed as the lead case.

Respectfully submitted,

IDELL & SEITEL LLP



Richard J. Idell

RJI:be

cc: via email:

Robert Michael Harkins, Jr.
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CERTIFICATE OF SERVICE

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Idell & Seitel LLP, 465 California Street, Suite 300, San Francisco, California 94104.

On February 16, 2012, the foregoing document/s:

LETTER TO HONORABLE DORA IRIZARRY FROM RICHARD J. IDELL

was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the New York, Eastern District's Local Rules, and/or the New York, Eastern District's Rules on Electronic Service upon the following parties and participants:

☒ by **ELECTRONIC MAIL.**

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☒ by regular **UNITED STATES MAIL** by placing a true and correct copy in a sealed envelope addressed as shown below. I am readily familiar with the practice of Idell & Seitel LLP for collection and processing of correspondence for mailing. According to that practice, items are deposited with the United States Postal Service at San Francisco, California on that same day with postage thereon fully prepaid. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation date or the postage meter date is more than one day after the date of deposit for mailing stated in this affidavit.

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7 I certify and declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct and I executed this declaration at San Francisco, California.
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Christy Holdt

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